

final order or decision. Failure to do so will result in the initiation of collection action, including the accrual of interest and penalties, in accordance with 31 U.S.C. 3717 and 49 CFR part 89.

[Amdt. 190-7, 61 FR 27792, June 3, 1996, as amended at 70 FR 11138, Mar. 8, 2005; 73 FR 16567, Mar. 28, 2008; Amdt. 190-16, 78 FR 58912, Sept. 25, 2013]

§ 190.229 [Reserved]

§ 190.231 [Reserved]

SPECIFIC RELIEF

§ 190.233 Corrective action orders.

(a) *Generally.* Except as provided by paragraph (b) of this section, if the Associate Administrator finds, after reasonable notice and opportunity for hearing in accord with paragraph (c) of this section, a particular pipeline facility is or would be hazardous to life, property, or the environment, the Associate Administrator may issue an order pursuant to this section requiring the operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other appropriate action.

(b) *Waiver of notice and expedited review.* The Associate Administrator may waive the requirement for notice and opportunity for hearing under paragraph (a) of this section before issuing an order whenever the Associate Administrator determines that the failure to do so would result in the likelihood of serious harm to life, property, or the environment. When an order is issued under this paragraph, a respondent that contests the order may obtain expedited review of the order either by answering in writing to the order within 10 days of receipt or requesting a hearing under § 190.211 to be held as soon as practicable in accordance with paragraph (c)(2) of this section. For purposes of this section, the term “expedited review” is defined as the process for making a prompt determination of whether the order should remain in effect or be amended or terminated. The expedited review of an order issued under this paragraph will be complete upon issuance of such determination.

(c) *Notice and hearing:*

(1) Written notice that OPS intends to issue an order under this section will be served upon the owner or operator of an alleged hazardous facility in accordance with § 190.5. The notice must allege the existence of a hazardous facility and state the facts and circumstances supporting the issuance of a corrective action order. The notice must provide the owner or operator with an opportunity to respond within 10 days of receipt.

(2) An owner or operator that elects to exercise its opportunity for a hearing under this section must notify the Associate Administrator of that election in writing within 10 days of receipt of the notice provided under paragraph (c)(1) of this section, or the order under paragraph (b) of this section when applicable. The absence of such written notification waives an owner or operator’s opportunity for a hearing.

(3) At any time after issuance of a notice or order under this section, the respondent may request a copy of the case file as set forth in § 190.209.

(4) A hearing under this section is conducted pursuant to § 190.211. The hearing should be held within 15 days of receipt of the respondent’s request for a hearing.

(5) After conclusion of a hearing under this section, the Presiding Official submits a recommended decision to the Associate Administrator as to whether or not the facility is or would be hazardous to life, property, or the environment, and if necessary, requiring expeditious corrective action. If a notice or order is contested in writing without a hearing, an attorney from the Office of Chief Counsel prepares the recommended decision. The recommended decision should be submitted to the Associate Administrator within five business days after conclusion of the hearing or after receipt of the respondent’s written objection if no hearing is held. Upon receipt of the recommendation, the Associate Administrator will proceed in accordance with paragraphs (d) through (h) of this section. If the Associate Administrator finds the facility is or would be hazardous to life, property, or the environment, the Associate Administrator issues a corrective action order in accordance with this section, or confirms

(or amends) the corrective action order issued under paragraph (b) of this section. If the Associate Administrator does not find the facility is or would be hazardous to life, property, or the environment, the Associate Administrator withdraws the notice or terminates the order issued under paragraph (b) of this section, and promptly notifies the operator in writing by service as prescribed in § 190.5.

(d) The Associate Administrator may find a pipeline facility to be hazardous under paragraph (a) of this section:

(1) If under the facts and circumstances the Associate Administrator determines the particular facility is hazardous to life, property, or the environment; or

(2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which the Associate Administrator determines is hazardous to life, property, or the environment, unless the operator involved demonstrates to the satisfaction of the Associate Administrator that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous.

(e) In making a determination under paragraph (d) of this section, the Associate Administrator shall consider, if relevant:

(1) The characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction or assembly;

(2) The nature of the materials transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such materials are transported, and the pressure required for such transportation;

(3) The characteristics of the geographical areas in which the pipeline facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas;

(4) Any recommendation of the National Transportation Safety Board

issued in connection with any investigation conducted by the Board; and

(5) Such other factors as the Associate Administrator may consider appropriate.

(f) A corrective action order shall contain the following information:

(1) A finding that the pipeline facility is or would be hazardous to life, property, or the environment.

(2) The relevant facts which form the basis of that finding.

(3) The legal basis for the order.

(4) The nature and description of any particular corrective action required of the respondent.

(5) The date by which the required corrective action must be taken or completed and, where appropriate, the duration of the order.

(6) If the opportunity for a hearing was waived pursuant to paragraph (b) of this section, a statement that an opportunity for a hearing will be available at a particular time and location after issuance of the order.

(g) The Associate Administrator will terminate a corrective action order whenever the Associate Administrator determines that the facility is no longer hazardous to life, property, or the environment. If appropriate, however, a notice of probable violation may be issued under § 190.207.

(h) At any time after a corrective action order issued under this section has become effective, the Associate Administrator may request the Attorney General to bring an action for appropriate relief in accordance with § 190.235.

(i) Upon petition by the Attorney General, the District Courts of the United States shall have jurisdiction to enforce orders issued under this section by appropriate means.

[70 FR 11138, Mar. 8, 2005, as amended by Amdt. 190–16, 78 FR 58912, Sept. 25, 2013]

§ 190.235 Civil actions generally.

Whenever it appears to the Associate Administrator that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of 49 U.S.C. 60101 *et seq.*, or any regulations issued thereunder, the Administrator, or the person to whom the authority has been delegated, may request the Attorney